

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL and KELLY YURCIC	:	
	:	
v.	:	
	:	
PURDUE PHARMA, L.P.	:	C.A. No. 02-CV-3737
and	:	
PURDUE PHARMA, INC.	:	
and	:	
PURDUE FREDERICK COMPANY	:	
and	:	
ABBOTT LABORATORIES	:	
and	:	
ABBOTT LABORATORIES, INC.	:	
and	:	
MORTON RUBIN, M.D.	:	
and	:	
HOWARD R. COHEN, M.D.	:	
	:	

**ORDER**

**AND NOW**, this                    day of                   , 2002, upon consideration of

the Motion to Dismiss Plaintiffs' Complaint Against Defendant, Howard R. Cohen, M. D., pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, and the responses, if any, thereto, it is hereby **ORDERED AND DECREED** that said Defendant's Motion is **GRANTED** and that Defendant, Howard R. Cohen, M. D., is dismissed with prejudice.

**BY THE COURT:**

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J.

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	:	

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**REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO DISMISS OF DEFENDANT,  
HOWARD R. COHEN, M. D.**

Plaintiffs have filed a Response in Opposition to the Defendant's Motion to Dismiss pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. Dr. Cohen files this Reply Brief to Plaintiffs' Response to address the arguments raised by plaintiffs.

Moving Defendant asserts that the action brought by Plaintiff is barred by the Statute of Limitations. This contention is evident within the "four corners" of the Complaint, and, as such, the action should be dismissed. Plaintiff responds by stating that the Statute of Limitations has been tolled by the Discovery Rule; that he had no comprehension of his addiction as a disease; and that he was reasonably diligent in discovering his injury. Plaintiff

contends that Moving Defendant requests this Court to make inferences adverse to the plaintiff, by asserting that the plaintiff reasonably should have been aware of his addiction more than two years prior to the filing of this lawsuit. Plaintiff states that moving defendant is asking this Court to ignore the allegation in the Complaint that Plaintiff had no "true comprehension of his addiction as a disease". See Complaint at paragraph 78. Plaintiff then argues that he was reasonably unaware of his addiction, in spite of the fact that he had been admitted to a rehabilitation hospital for treatment of addiction more than two years prior to the initiation of the action.

Plaintiff chooses to ignore that Moving Defendant is citing multiple allegations within the Complaint itself that demonstrate that the Plaintiff reasonably should have been aware of his addiction more than two years prior to the initiation of the action. The Complaint states within the "four corners", that by December 27, 1999, the Plaintiff knew:

- a. He was prescribed a withdrawal plan (Paragraph 75);
- b. He was unsuccessful in following the withdrawal plan (Paragraph 76);
- c. He agreed to enroll in an inpatient detoxification program (Paragraph 76);
- d. He was suffering from withdrawal symptoms due to his lack of narcotics for seven days (Paragraph 76); and
- e. He was admitted to a hospital for treatment of his addiction (Paragraph 77).

As mentioned in the Motion, in Pennsylvania, the standard for reasonable diligence is an objective or external one that is the same for all individuals. It is not a subjective standard. The fact that an individual plaintiff may have lacked knowledge of his or her injury is not relevant. The Statute is tolled only if a reasonable person in the Plaintiff's position would have been unaware of the salient facts. Baily v. Lewis, 763 F.Supp. 802 (E.D.Pa.1991). Moreover,

while it is true that in most cases, the question of what a plaintiff should reasonably have discovered is a factual determination that should be left to the jury, in some cases, “the facts will be undisputed and will lead unerringly to the conclusion that the length of time it took a plaintiff to discover the injury or its cause was unreasonable as a matter of law.” Anthony v. Koppers Co., Inc., 284 Pa.Super. 81, 425 A.2d 428, *rev’d on other grounds*, 496 Pa. 119, 436 A.2d 181 (1981).

Moving Defendant, in his Motion, has merely presented this Honorable Court with language taken directly from the Complaint that was drafted and filed by Plaintiff in this matter. Plaintiff contends that he was reasonably unaware of his addiction, and was reasonably diligent in its discovery. It is clear however that a reasonable individual would have been aware of his addiction in view of the allegations taken directly from the Complaint more than two years prior to the filing of the action.

#### **IV. CONCLUSION**

For all the foregoing reasons, Defendant, Howard R. Cohen, M. D., respectfully requests that this Court grant his Motion to Dismiss.

**WHITE AND WILLIAMS LLP**

*By:* \_\_\_\_\_

*ALLAN H. STARR, ESQUIRE  
STEPHAN R. PAUL, ESQUIRE  
Attorney I.D. Nos. 04975/86896  
1800 One Liberty Place  
Philadelphia, PA 19103-7395  
(215) 864-6228/7076  
Attorneys for Answering Defendant  
Howard R. Cohen, M. D.*

Dated:

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and	:	
MORTON RUBIN, M.D.	:	
and	:	
HOWARD R. COHEN, M.D.	:	
	:	

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**CERTIFICATE OF SERVICE**

I, Stephan R. Paul, Esquire, hereby certify that on the      day of               , 2002, I caused true and correct copies of the foregoing Response to Plaintiffs' Motion for Remand and Brief in Support of the Response to Plaintiffs' Motion for Remand of Defendant, Howard R. Cohen, M. D., to be served upon the following persons, by placing same in the United States mail, first-class and postage prepaid:

TO: Sol H. Weiss, Esquire  
Marc Stolee, Esquire

1900 Delancy Place  
Philadelphia, PA. 19103  
**Attorneys for Plaintiffs**

Jason A. Snyderman, Esquire  
Edward F. Mannino, Esquire  
Katherine Menapace, Esquire  
David L. Comerford, Esquire  
One Commerce Square  
2005 Market Street-Suite 2200  
Philadelphia, PA 19103  
**Attorneys for Defendant Purdue Pharma**

Joseph E. O'Neil, Esquire  
Penn Mutual Tower, 10<sup>th</sup> Floor  
510 Walnut Street  
Philadelphia, PA 19106  
**Attorneys for Abbott Laboratories**

Kenneth Fair, Esquire  
Naulty, Scariczmazza & McDevitt  
Suite 1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103

**WHITE AND WILLIAMS LLP**

*BY:* \_\_\_\_\_  
*ALLAN H. STARR, ESQUIRE*  
*STEPHAN R. PAUL, ESQUIRE*  
*Attorneys for Defendant*  
*Howard R. Cohen, M. D.*

**DATED:**